

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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LISSANDER DONES,

Plaintiff,

-against-

**AMENDED  
DECLARATION OF  
ROCCO G. AVALLONE**

07 CV 3085 (SAS)

THE CITY OF NEW YORK, POLICE COMMISSIONER  
RAYMOND KELLY, in his official capacity, SERGEANT  
FRANK TERAN, in his official and individual capacity,  
CAPTAIN THOMAS SCOLLAN, in his official and  
Individual Capacity, et al,

Defendants.

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ROCCO G. AVALLONE, being duly sworn, states the following under penalty of  
perjury.

1. I am an attorney at law duly admitted to practice in the State and Federal Courts  
of New York, and associated with the law firm of Cronin & Byczek, LLP, counsel for the  
Plaintiff, LISSANDER DONES, in this matter.

2. This declaration is submitted in support of Plaintiff's Opposition to Defendants'  
Motion for Summary Judgment, pursuant to Federal Rule of Civil Procedure 56. This  
Declaration is based upon my personal knowledge as counsel for the Plaintiff in this case.

3. Plaintiff submits the annexed documents and portions of deposition transcripts in  
the accompanying submission, Exhibits 1-9, along with the annexed Local Rule 56.1 Statement  
and accompanying Memorandum of Law.

4. In opposition of Defendants' Motion for Summary Judgment is the declaration of  
Lissander Dones.

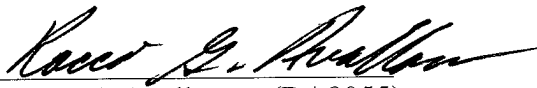
5. In opposition to Defendants' Motion for Summary Judgment are the following materials exchanged by the parties through the discovery process:

- Exhibit 1: Deposition transcript of Lissander Dones dated February 20, 2008.
- Exhibit 2: Charges and Specifications issued to Lissander Dones dated September 10, 2004.
- Exhibit 3: Notice of Amendment of Charges Disciplinary against Detective Lissander Dones dated October 22, 2004.
- Exhibit 4: Decision from the Trial Room, dated June 13, 2005.
- Exhibit 5: Patrol Guide Procedure No: 206-13 Interrogation of Members Of The Service.
- Exhibit 6: Transcript from Trial Room testimony of Sergeant Gregory Garland dated February 1, 2005
- Exhibit 7: 206-13 interview of Detective Donald Mantz dated September 28, 2004.
- Exhibit 8: 206-13 interview of Detective Michael Siraco dated September 30, 2004.
- Exhibit 9: Internal Affairs Bureau Group 51 roll call for the week of 11/23/03 to 11/29/03.
- Exhibit 10: Disposition of Charges dated 6/13/05.
- Exhibit 11: Transcript from Trial Room testimony of Detective Michael Clohessy dated February 1, 2005
- Exhibit 12: Transcript from Trial Room testimony of Sergeant Francis Teran dated February 1, 2005

6. Extensive discovery in this case was conducted from 2007 through 2008, including the taking of depositions and exchange of documents.

7. Based upon all of the facts as set forth in the Rule 56.1 Statement, annexed exhibits, declarations, and Memorandum of Law, Plaintiff submits that the Defendants are not entitled to Summary Judgment and that this matter should be scheduled for trial due to the voluminous amount of questions of fact.

Dated: Lake Success, New York  
May 9, 2008

  
Rocco G. Avallone (RA8055)